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JANINA M. ELDER

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re:

DEMAS WAI YAN  
aka Dennis Yan  
SS # xxx xx 5968

Debtor

JANINA M. ELDER, Trustee  
Plaintiff

v.

547 23<sup>RD</sup> AVENUE LLC,

Defendant

Case No. 04-33526 TCJE

Chapter 7

AP # 08-3035

**FIRST AMENDED COMPLAINT FOR VIOLATION OF AUTOMATIC STAY;  
AVOIDANCE OF POST-PETITION TRANSFER, AND FOR DECLARATORY RELIEF**

COMES NOW, Plaintiff, Janina M. Elder, trustee of the above-referenced bankruptcy estate, and alleges as follows:

**JURISDICTION**

1. Jurisdiction over this action exists pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334, and venue is proper pursuant to 28 U.S.C. § 1409.
2. This adversary proceeding is a core matter pursuant to 28 U.S.C. § 157.



1 that the deed conveying title to Defendant is void as a matter of law and without effect.

2 12. A judicial determination is necessary to restore title to the bankruptcy estate in the  
3 public records.

4 WHEREFORE, Plaintiff prays for judgment against Defendant as is hereinafter set forth.

5 **THIRD CLAIM FOR RELIEF**  
6 **(11 U.S.C. § 549 - Avoidance of Post-Petition Transfer)**

7 15. Plaintiff incorporates by reference each and every allegation in the paragraphs  
8 above, as though fully set forth herein.

9 16. Upon information and belief, the Transfer to Defendant occurred after the  
10 commencement of this bankruptcy case.

11 17. Upon information and belief, the Transfer to Defendant was not authorized under  
12 the Bankruptcy Code or by the Bankruptcy Court.

13 WHEREFORE, Plaintiff prays for judgment against Defendant as hereinafter set forth.

14 **FOURTH CLAIM FOR RELIEF**  
15 **(11 U.S.C. § 551 and § 550 - Recovery of Money )**

16 18. Plaintiff incorporates by reference each and every allegation in the paragraphs  
17 above, as though fully set forth herein.

18 19. Upon information and belief, any transfer avoided under 11 U.S.C. section 549 is  
19 automatically preserved for the benefit of the bankruptcy estate.

20 20. Upon information and belief, pursuant to 11 U.S.C. § 550(a), to the extent a  
21 transfer is avoided under 11 U.S.C. § 549, Plaintiff may recover, for the benefit of the estate, the  
22 property or the value of the property from the entity to which the Transfer was made.

23 WHEREFORE, Plaintiff prays for judgment against Defendant as hereinafter set forth.

24 **PRAYER**

25 1. For judgment against the Defendant that the purported transfer of the Property to  
26 Defendant is void;

27 2. For judgment against the Defendant declaring title to the Property to be held by  
28 Janina M. Elder as trustee for the bankruptcy estate of Demas Wai Yan;

3. On the third and fourth claims for relief, a judgment against Defendant avoiding the

1 Transfer of the property from the Debtor to the Defendant;

2 4. On the third and fourth claims for relief, a judgment against Defendant for money  
3 damages in an amount according to proof;

4 5. For prejudgment interest of 10% on all claims for relief from the date of the  
5 Transfer

6 6. For costs of suit;

7 7. For such other and further relief as the Court deems appropriate.

8 DATED: This 24<sup>th</sup> day of November, 2009.

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STROMSHEIM & ASSOCIATES

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/s/ Joanne LaFreniere  
Attorneys for Plaintiff,  
JANINA M. ELDER, Trustee

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